D.B. CIVIL SPECIAL APPEAL (w) NO.348/2006
(Ram Karan Sharma Vs. State & Ors.)

Date of order : 18.10.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vijay Bishnoi, for the appellant.
Mr. L.R. Upadhyay, Govt. Advocate.

Heard learned counsel for the parties.

Learned Single Judge has dismissed the writ petition filed by the petitioner who is working as Tailor under the Medical & Health Department, Government Hospital, Bhilwara. The petitioner was appointed on the post of Tailor vide order dated 4.12.1978 by the Chief Medical & Health Officer, Bhilwara and since then he is working on the post.

Under the Rajasthan Civil Services (Revised Pay Scale) (First Amendment) Rules, 1992, which came into effect w.e.f. 1.9.1998, the pay-scale No.6 (950-1680) was made applicable for the post of Tailor. However, the benefit of the said revised pay-scale was not extended to the petitioner. He, therefore, made a demand of justice by giving a notice dated 4.4.2006 calling upon the respondents to release pay-scale No.6 under the Rules of 1992 and consequential fixation in further revised pay-scale from time to time.

In his representation, he has also referred to the decision of the Rajasthan High Court, Jaipur Bench in SB Civil Writ Petition No.4006/1992 decided by learned Single Judge on 6.2.2004 and the order of Division Bench in appeal against the said judgment preferred by State by which the special appeal was dismissed.

Notwithstanding the aforesaid representation, the Principal Medical Officer, Bhilwara vide his letter dated 14.12.2005 recommended the case of the petitioner for release of his pay in pay-scale No.6 w.e.f. 1.9.1988 and consequential fixation in further revised pay-scale from time to time.

However, when the petitioner did not get any relief, he approached this Court by way of filing writ petition. The learned Single Judge rejected the writ petition filed by the petitioner only on the ground that the petitioner had remedy of appeal before the Rajasthan Civil Services Appellate Tribunal.

However, we are of the opinion that the assumption by the learned Single Judge that appeal lie before the Rajasthan Civil Services Appellate Tribunal was erroneous. There being no order passed against the petitioner, the appeal by way of seeking mandamus in terms of Article 226 of Constitution is not the remedy which could be provided by the Tribunal. The

petitioner is seeking mandamus against the respondents to act in the field where they are not acting and, therefore, the invocation of extra ordinary jurisdiction in such matters, particularly keeping in view the relief claimed by the petitioner was governed by Division Bench decision, ought not to have been denied.

On merit of the petition, we find that the learned Single Judge of this Court in judgment dated 6.2.2004 passed in SB Civil Writ Petition No.4006/1992 (Rajasthan Rajya Vahan Chalak Takniki Karmchari Sangh & Anr. Vs. State of Rajasthan) has held that pay-scale No.6 is allowable to the tailors working with the Medical College, Jaipur when it was pointed out that while pay-scale No.6 is being offered to the tailors who are working in different departments but the same is not being extended to the tailors working in Medical and Health Department. This was found to be in gross violation of principle of equal pay for equal work.

The aforesaid decision was affirmed by the Division Bench in DB Civil Special Appeal No.427/2004 decided on 31.8.2004 while dismissing the appeal preferred by State. The decision rendered in aforesaid special appeal reads as under :-

"We do not find any error or

> illegality in the impugned order passed by the learned Single Judge. It is not disputed that the tailors working Public Works Departments, Governor's Secretariat, Jail Department, Labour Welfare Department and Jodhpur Medical College and Hospital, have been placed in payscale No.6. There is no justification as to why tailors working in Jaipur Medical College and associate hospitals should not be given the same pay-scale as is being given to tailors working in other departments of the government namely Public Works Department, Governor's Secretariat, Jail Department, Labour Welfare Department and Jodhpur Medical College and Hospital. The learned Single Judge, therefore, was entirely right in directing the appellants to grant the benefit of pay-scale No.6 to the respondents, who are working as tailors in Jaipur Medical College and associate hospitals."

In view of the aforesaid enunciation of principle by this Court so far as the extension of pay-scale No.6 to the tailors working in the Medical & Health Department in the Rajasthan and other departments, there is no reason not to extend the said relief in pursuance of the decision of this Court.

Accordingly, the appeal is allowed. The judgment under appeal is set aside. The writ petition filed by the petitioner is allowed and the respondents are directed to fix the petitioner in the pay-scale No.6 as applicable to the Tailors in Medical & Health Department w.e.f. 1.9.1988 and make all subsequent fixation of pay scale as revised from time to time on that basis. This exercise be done within a period of two months from the date, the order of this Court is

placed before the competent authority and to release the arrears arising from such re-fixation. Arrears, as a result of aforesaid, the re-fixation shall be released to the petitioner within a further period of one month from the date the fixation is made. Failing which the respondents shall be liable to pay interest @ 9% on such arrears from the date of filing of the writ petition.

No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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